



Department of Energy
Acquisition Regulation

No. 96-05
Date May 10, 1996

ACQUISITION LETTER

AUTHORITY

This Acquisition Letter (AL) is issued by the Procurement Executive pursuant to a delegation from the Secretary and under the authority of the Department of Energy Acquisition Regulation (DEAR) Subpart 901.301-70.

CONTENTS

CITATION

TITLE

FAR Subpart 25.4

Trade Agreements

FAR Subpart 25.10

Implementation Of Sanctions Against
Countries That Discriminate Against
United States Products Or Services
In Government Procurement

- I. **Purpose.** The purpose of this AL is to provide guidance on recent changes to procurement policy and procedures applicable to the acquisition of foreign supplies and construction materials by the Department of Energy (DOE) and the Department's Power Marketing Administrations (PMAs). As of January 1, 1996, acquisitions by DOE and its PMAs are covered by the Trade Agreements Act of 1979 (TAA) so that in certain circumstances DOE and its PMAs are required to waive application of the Buy American Act (BAA) statutory preference for domestic supplies and construction materials. In addition, coverage under the TAA has been extended to services.
- II. **Background.** During the past three years, the United States has entered into several trade agreements that have required DOE and its PMAs to waive the statutory preference for domestic supplies and construction materials set forth in the BAA for products from certain foreign offerors.

These agreements include the Memorandum of Understanding on Government Procurement Between the United States and the European Community (US-EC MOU), the North American Free Trade Agreement (NAFTA) and, most recently, the Agreement on Government Procurement (AGP) which became effective on January 1, 1996. U.S. obligations under NAFTA and the AGP have been implemented into U.S. law through amendments to the TAA. The US-EC MOU expired on January 1, 1996.



PMAs; one purpose of this AL is to provide guidance in this area until a regulation is issued.

FAC 90-36 also amended FAR Subpart 25.10 on the implementation of sanctions against certain members of the European Union. These sanctions are applicable to DOE and its PMAs. FAR 25.1001 states that the Department is responsible for issuing regulations that address different dollar value thresholds for application of the sanctions by PMAs; another purpose of this AL is to provide guidance in this area until a regulation is issued.

III. Guidance

Contracting Officers should ensure that solicitations issued on or after January 1, 1996, have been appropriately amended to include the new requirements set forth in FAC 90-36. These new requirements are discussed in the following sections of this AL:

- o Section A provides guidance on the applicability of FAR Subpart 25.4 to DOE. Different procurement thresholds applicable to procurement from Canada and Mexico due to NAFTA requirements are identified.
- o Section B provides guidance on the applicability of FAR Subpart 25.4 to PMAs.
- o Section C notes an important TAA prohibition on the procurement of goods from certain countries by DOE and its PMAs.
- o Section D explains the exclusions from NAFTA and AGP requirements for national security contracts applicable to DOE and its PMAs.
- o Section E states that the requirements of FAR Subparts 25.4 and 25.10 are not applicable to purchases by DOE management and operating contractors.
- o Section F provides guidance on the applicability of FAR Subpart 25.10 regarding European Union sanctions to procurements by DOE and its PMAs.
- o Section G concludes with guidance on clauses applicable to procurements subject to FAR Subparts 25.1, 25.2, 25.4 and 25.10. Due to different requirements imposed on the DOE and its PMAs, it will be necessary for Contracting Officers, in some cases, to incorporate the

(e.g., the dollar value of the services), except as provided in Subpart 25.10 concerning sanctioned European Union services. The BAA does not apply to services and there is no equivalent law applicable to services.

NOTE: DOE policies and procedures regarding the disclosure by prospective contractors of foreign ownership, control, or influence and the regulations governing DOE's contracting with companies owned, controlled, or influenced by foreign interests in 48 CFR Subpart 904.71 are unaffected by this AL.

B. Applicability of FAR Subpart 25.4 to PMA Procurements

1. Supplies. Pursuant to FAR Subpart 25.4, the TAA, NAFTA and the AGP, PMAs are obligated to waive the restrictions of the BAA for offers of a "designated country end product," a "Mexican end product" or a "Canadian end product," as those terms are defined in FAR 25.401, when the value of the proposed acquisition is estimated to be \$250,000 or more, except that BAA restrictions shall not be waived for offers from Canada, Switzerland, Norway, and Japan, regardless of the dollar value.
2. Construction Materials. Pursuant to FAR Subpart 25.4, the TAA, NAFTA and the AGP, PMAs are obligated to waive application of the BAA for an offer of a construction contract utilizing "designated country construction material" or "NAFTA country construction material" only from Mexico, as those terms are defined in FAR 25.401, estimated to be valued at \$7,311,00 or more, except that BAA restrictions shall not be waived for offers from Canada, Switzerland, Norway, and Japan, regardless of the dollar value of the procurement.
3. Services. Pursuant to FAR 25.4, the TAA, NAFTA and the AGP, the threshold for the application of Subpart 25.4 to offers of services is \$250,000. However, as a practical matter, the application of Subpart 25.4 to offers of services to PMAs does not change current laws and policies affecting PMAs' procurement of services. U.S. procurement laws and DOE policy do not provide any basis to discriminate against any offer of services (e.g., the dollar value of the services), except as

1. DOE. Pursuant to FAR 25.1002, DOE shall not award contracts for "Sanctioned European Union (EU) end products" or "Sanctioned EU services," as those terms are defined in FAR 25.1001, with an estimated acquisition value of less than \$190,000. Regardless of the dollar value of the acquisition, DOE shall not award contracts for services listed in FAR 25.1002(a)(3)(ii). In addition, DOE shall not award contracts for "Sanctioned European construction" contracts, as that term is defined in FAR 25.1001, with an estimated acquisition value of less than \$7,311,000.
2. PMA. PMAs shall not award contracts for "Sanctioned European Union (EU) end products" or "Sanctioned EU services," as those terms are defined in FAR 25.1001, with an estimated acquisition value of less than \$250,000. Regardless of the dollar value of the acquisition, PMAs shall not award contracts for services listed in FAR 25.1002(a)(3)(ii). In addition, PMAs shall not award contracts for "Sanctioned European construction" contracts, as that term is defined in FAR 25.1001, with an estimated acquisition value of less than \$7,311,000.

G. Clauses Applicable to Foreign Acquisitions by DOE and PMAs

1. FAR 52.225-3, "Buy American Act-Supplies," should be inserted in DOE solicitations for supplies when the acquisition is not subject to the TAA or NAFTA; i.e., the value of the acquisition is less than \$25,000 (the threshold for an offer of a Canadian end product). The provision at FAR 52.225-1, "Buy American Certificate," also should be inserted when this clause is used.
 - o PMAs should use these clauses when the value of the acquisition is estimated to be less than \$250,000.
2. FAR 52.225-5, Buy American Act-Construction Materials," should be used in DOE solicitations for construction when the acquisition is not subject to the TAA or NAFTA; i.e., the value of the acquisition is less than \$6,500,000 (the threshold for an offer utilizing NAFTA country construction material).

Agreement Implementation Act-Balance of Payments Certification," also should be inserted in a solicitation when this clause is used.

- o PMAs do not to use these clauses because the lowest threshold that makes TAA or NAFTA requirements applicable to PMAs is \$250,000.
- 6. FAR 52.225-18, "European Union Sanction for End Products," should be inserted in DOE solicitations for supplies with an estimated acquisition value of less than \$190,000.
 - o PMAs should use this clause when the value of the acquisition is less than \$250,000.
- 7. FAR 52.225-19, "European Union Sanction for Services," should be inserted in DOE solicitations for services with an estimated acquisition value of less than \$190,000 or if the service is listed in FAR 25.1002(a)(3)(ii) regardless of the dollar value.
 - o PMAs should use this clause when the value of the acquisition is less than \$250,000 or if the service is listed in FAR 25.1002(a)(3)(ii) regardless of the dollar value.

Note: There are no other clauses applicable to the procurement of services under FAR Part 25.

IV. **Effective Date.** This AL is effective on the date of issuance. The amendments to FAR Subpart 25.4 and FAR Subpart 25.10, as set forth in FAC 90-36, apply to solicitations for the procurement of supplies, services, and construction materials issued by the Department and its PMAs on or after January 1, 1996.

V. **Expiration Date.** This AL will remain in effect until the DEAR is amended as necessary to reflect the guidance provided above.

LINE IN/LINE OUT VERSION OF MODEL PROVISIONS/CLAUSES

PROVISIONS ASSOCIATED WITH THE BUY AMERICAN ACT, NORTH AMERICAN FREE TRADE AGREEMENT, AND THE TRADE AGREEMENTS ACT FOR USE BY DEPARTMENT OF ENERGY OFFICES EXCEPT THE POWER MARKETING ADMINISTRATIONS

1. MODEL DOE PROVISION-BUY AMERICAN ACT-TRADE AGREEMENTS-BALANCE OF PAYMENTS PROGRAM FOR DOE CERTIFICATE (MAY 1996) [to be used in place of the provision at FAR 52.225-8]

2. MODEL DOE CLAUSE-BUY AMERICAN ACT-TRADE AGREEMENTS-BALANCE OF PAYMENTS PROGRAM (MAY 1996) [to be used in place of the clause at FAR 52.225-9]

PROVISIONS ASSOCIATED WITH THE BUY AMERICAN ACT, NORTH AMERICAN FREE TRADE AGREEMENT, AND THE TRADE AGREEMENTS ACT FOR USE BY DOE'S POWER MARKETING ADMINISTRATIONS

1. MODEL PMA PROVISION-BUY AMERICAN ACT-TRADE AGREEMENTS-BALANCE OF PAYMENTS PROGRAM CERTIFICATE (MAY 1996) [to be used in place of the provision at FAR 52.225-8]

2. MODEL PMA CLAUSE-BUY AMERICAN ACT-TRADE AGREEMENTS-BALANCE OF PAYMENTS PROGRAM (MAY 1996) [to be used in place of the clause at FAR 52.225-9]

3. MODEL PMA CLAUSE-BUY AMERICAN ACT-CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS ACT AND NORTH AMERICAN FREE TRADE AGREEMENT (MAY 1996) [to be used in place of the clause at FAR 52.225-15]

DEPARTMENT OF ENERGY VERSION OF FAR 52.225-8

BUY AMERICAN ACT-TRADE AGREEMENTS-BALANCE OF PAYMENTS PROGRAM
CERTIFICATE (MAY 1996 JAN 1994)

(a) The offeror hereby certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled Buy American Act-Trade Agreements-Balance of Payments Program) and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, or a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

(b) Excluded End Products:

Line Item Number

Country of Origin

(List as necessary)

(c) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, and NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are designated or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and certified below will not be deemed designated country end products, or NAFTA country end products, or Caribbean Basin country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(1) The offeror certifies that the following supplies qualify as "designated or NAFTA country end products" as those terms are defined in the clause entitled "Buy American Act-Trade Agreements-Balance of Payments Program:"

(Insert line item numbers)

(2) ~~The offeror certifies that the following supplies qualify as Caribbean Basin country end products as that term is defined~~

BUY AMERICAN ACT-TRADE AGREEMENTS-BALANCE OF PAYMENTS PROGRAM
(MAY 1996 JAN 1994)

(a) This clause implements the Buy American Act (41 U.S.C. 10), the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582), the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103-182, 107 Stat. 2057) and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as designated, ~~or NAFTA, or Caribbean Basin~~ country end products.

~~Caribbean Basin country end product, as used in this clause, means an article that: (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. The term excludes products that are excluded from duty-free treatment for Caribbean countries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of (i) textiles and apparel articles that are subject to textile agreements; (ii) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under title V of the Trade Act of 1974; (iii) tuna, prepared or preserved in any manner in airtight containers; (iv) petroleum, or any product derived from petroleum; and (v) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column 2 rates of duty apply.~~

Components, as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

Designated country end product, as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of the designated country (as defined in section 25.401 of the

calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

(b) The Contracting Officer has determined that the Trade Agreements Act and NAFTA apply to this acquisition. Unless otherwise specified, the Acts apply to all items in the schedule. The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled "Buy American Act-Trade Agreements-Balance of Payments Program Certificate." An offer certifying that a designated, ~~or NAFTA, or Caribbean Basin~~ country end product will be supplied requires the Contractor to supply a designated, ~~or NAFTA, or Caribbean Basin~~ country end product or, at the Contractor's option, a domestic end product. Contractors may not supply a foreign end product for the line items subject to the Trade Agreements Act unless-

(1) The foreign end product is an eligible product ~~(see FAR 25.401)~~;

(2) The Contracting Officer determines that offers of domestic end products or of eligible products are either not received or are insufficient to fulfill the Government's requirements; or

(3) A waiver is granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

(c) Offers will be evaluated in accordance with the policies and procedures of Subpart 25.4 of the FAR.

(End of clause)

BUY AMERICAN ACT-TRADE AGREEMENTS-BALANCE OF PAYMENTS PROGRAM
CERTIFICATE (MAY 1996 JAN 1994)

(a) The offeror hereby certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled Buy American Act-Trade Agreements-Balance of Payments Program) and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, as defined in the clause of this contract entitled "Buy American Act-Trade Agreements-Balance of Payments Program," or Mexico, a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

(b) Excluded End Products:

Line Item Number

Country of Origin

(List as necessary)

(c) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, and Mexican NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are designated or Mexican NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and certified below will not be deemed designated country end products, Mexican NAFTA country end products, or Caribbean Basin country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(1) The offeror certifies that the following supplies qualify as "designated or Mexican NAFTA country end products" as those terms are defined in the clause entitled "Buy American Act-Trade Agreements-Balance of Payments Program:"

(Insert line item numbers)

BUY AMERICAN ACT-TRADE AGREEMENTS-BALANCE OF PAYMENTS PROGRAM
(MAY 1996 JAN 1994)

(a) This clause implements the Buy American Act (41 U.S.C. 10), the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582), the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103-182, 107 Stat. 2057) and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as designated, or Mexican NAFTA, or Caribbean Basin country end products.

~~Caribbean Basin country end product, as used in this clause, means an article that: (1) is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. The term excludes products that are excluded from duty-free treatment for Caribbean countries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of (i) textiles and apparel articles that are subject to textile agreements; (ii) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under title V of the Trade Act of 1974; (iii) tuna, prepared or preserved in any manner in airtight containers; (iv) petroleum, or any product derived from petroleum; and (v) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column 2 rates of duty apply.~~

Components, as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

(b) The Contracting Officer has determined that the Trade Agreements Act and NAFTA apply to this acquisition. Unless otherwise specified, the Acts apply to all items in the schedule. The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled "Buy American Act-Trade Agreements-Balance of Payments Program Certificate." An offer certifying that a designated, ~~or Mexican NAFTA, or Caribbean Basin~~ country end product will be supplied requires the Contractor to supply a designated, ~~or Mexican NAFTA, or Caribbean Basin~~ country end product or, at the Contractor's option, a domestic end product. Contractors may not supply a foreign end product for the line items subject to the Trade Agreements Act unless-

(1) The foreign end product is an eligible product (~~see FAR 25.401~~);

(2) The Contracting Officer determines that offers of domestic end products or of eligible products are either not received or are insufficient to fulfill the Government's requirements;
or

(3) A waiver is granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

(c) Offers will be evaluated in accordance with the policies and procedures of Subpart 25.4 of the FAR.

(End of clause)

BUY AMERICAN ACT-CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS
ACT AND NORTH AMERICAN FREE TRADE AGREEMENT (MAY 1996 JAN-1994)

(a) Definitions. As used in the clause-

Components means those articles, materials, and supplies incorporated directly into construction materials.

Construction material means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

Designated country construction material means a construction material that (a) is wholly the growth, product, or manufacture of a designated country (as defined at FAR 25.401, except Canada, Japan, Norway, and Switzerland), or (b) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

Domestic construction material means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the U.S., if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(3) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.

~~North American Free Trade Agreement (NAFTA) country means Canada or Mexico.~~

Mexican NAFTA country construction material means a construction material that (1) is wholly the growth, product, or manufacture of Mexico a NAFTA country, or (2) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially

MODEL PROVISIONS/CLAUSES

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2. MODEL DOE CLAUSE-BUY AMERICAN ACT-TRADE AGREEMENTS-BALANCE OF PAYMENTS PROGRAM (MAY 1996) [to be used in place of the clause at FAR 52.225-9]

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3. MODEL PMA CLAUSE-BUY AMERICAN ACT-CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS ACT AND NORTH AMERICAN FREE TRADE AGREEMENT (MAY 1996) [to be used in place of the clause at FAR 52.225-15]

MODEL PROVISIONS/CLAUSES

DEPARTMENT OF ENERGY VERSION OF FAR 52.225-8

BUY AMERICAN ACT-TRADE AGREEMENTS-BALANCE OF PAYMENTS PROGRAM
CERTIFICATE (MAY 1996)

(a) The offeror hereby certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled Buy American Act-Trade Agreements-Balance of Payments Program) and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, or a North American Free Trade Agreement (NAFTA) country, as defined in section 25.401 of the Federal Acquisition Regulation.

(b) Excluded End Products:

Line Item Number	Country of Origin

(List as necessary)

(c) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products and NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are designated or NAFTA country end products. Products that are not identified and certified below will not be deemed designated country end products or NAFTA country end products. The offeror certifies that the following supplies qualify as "designated or NAFTA country end products" as those terms are defined in the clause entitled "Buy American Act-Trade Agreements-Balance of Payments Program:"

(Insert line item numbers)

(d) Offers for eligible end products as defined in the clause entitled "Buy American Act-Trade Agreements-Balance of Payments Program" will be evaluated in accordance with appropriate portions of part 25 of the Federal Acquisition Regulation.

(End of provision)

DEPARTMENT OF ENERGY VERSION OF 52.225-9

BUY AMERICAN ACT-TRADE AGREEMENTS-BALANCE OF PAYMENTS PROGRAM
(MAY 1996)

(a) This clause implements the Buy American Act (41 U.S.C. 10), the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582), the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103-182, 107 Stat. 2057) and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as designated or NAFTA country end products.

Components, as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

Designated country end product, as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of the designated country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. Domestic end product, as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, or (ii) to which the agency head concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

POWER MANAGEMENT ADMINISTRATIONS' VERSION OF FAR 52.225-8

BUY AMERICAN ACT-TRADE AGREEMENTS-BALANCE OF PAYMENTS PROGRAM
CERTIFICATE (MAY 1996)

(a) The offeror hereby certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled Buy American Act-Trade Agreements-Balance of Payments Program) and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, as defined in the clause of this contract entitled "Buy American Act-Trade Agreements-Balance of Payments Program," or Mexico.

(b) Excluded End Products:

Line Item Number	Country of Origin

(List as necessary)

(c) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, and Mexican country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are designated or Mexican country end products. Products that are not identified and certified below will not be deemed designated country end products, Mexican country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(1) The offeror certifies that the following supplies qualify as "designated or Mexican country end products" as those terms are defined in the clause entitled "Buy American Act-Trade Agreements-Balance of Payments Program:"

(Insert line item numbers)

(d) Offers for eligible end products as defined in the clause entitled "Buy American Act-Trade Agreements-Balance of Payments Program" will be evaluated in accordance with appropriate portions of part 25 of the Federal Acquisition Regulation.

(End of provision)

POWER MARKETING ADMINISTRATIONS' VERSION OF 52.225-9

BUY AMERICAN ACT-TRADE AGREEMENTS-BALANCE OF PAYMENTS PROGRAM
(MAY 1996)

(a) This clause implements the Buy American Act (41 U.S.C. 10), the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582), the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103-182, 107 Stat. 2057) and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as designated or Mexican, or Caribbean Basin country end products.

Components, as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

Designated country end product, as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of the designated country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR), except Canada, Japan, Norway, and Switzerland), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. Domestic end product, as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, or (ii) to which the agency head concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

POWER MARKETING ADMINISTRATIONS' VERSION OF FAR 52.225-15

BUY AMERICAN ACT-CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS
ACT AND NORTH AMERICAN FREE TRADE AGREEMENT (MAY 1996)

(a) Definitions. As used in the clause-

Components means those articles, materials, and supplies incorporated directly into construction materials.

Construction material means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

Designated country construction material means a construction material that (a) is wholly the growth, product, or manufacture of a designated country (as defined at FAR 25.401, except Canada, Japan, Norway, and Switzerland), or (b) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

Domestic construction material means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the U.S., if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(3) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.

Mexican country construction material means a construction material that (1) is wholly the growth, product, or manufacture of Mexico, or (2) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Mexico into a new and different construction material distinct from the materials from which it was transformed.